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Richard Martin
Proc. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-187086

DATE: March 10, 1977

MATTER OF: Poli-Com Inc.

DIGEST:

Although RFPs were canceled by agency on erroneous assumption that adequate specifications were not available, reinstatement of canceled solicitations and negotiations solely with protester may not be permitted. Proposals should be resolicited as proposed by agency.

Poli-Com Inc. (Poli-Com) has protested the cancellation of five requests for proposals (RFPs) issued by the Navy Ships Part Control Center (SPCC), Mechanicsburg, Pennsylvania. The RFPs are as follows:

<u>ISSUE DATE</u>	<u>CLOSING DATE</u>	<u>RFP NO.</u>	<u>DESCRIPTION</u>	<u>CANCELLATION DATE</u>
17 Jan 1975	23 Jan 1976	N00104-75-R-VQ29	Amplifier	1 Sept 1976
23 Oct 1975	26 Dec 1975	N00104-76-R-0547	Actuator	13 Aug 1976
31 Mar 1975	30 Apr 1975	N00104-75-R-1740	Amplifier	1 Sept 1976
28 Jun 1976	26 Jul 1976	N00104-76-R-2601	Amplifier	13 Aug 1976
22 Jul 1976	16 Aug 1976	N00104-76-R-5722	Amplifier	5 Aug 1976

All of the RFPs covered spare parts to support the AN/SCR 20 radio set used in ship-to-ship and aircraft control communications and required that manufacture be in accordance with drawings specified for each item. All of the procurements were restricted to sources previously approved by the Navy for production of the items. The amendments which canceled the RFP all cite as the reasons therefor defective specifications or "specifications undergoing review."

Poli-Com contends that it was the lowest responsible offeror with respect to at least three of the canceled solicitations, that SPCC had adequate technical data available, and that Poli-Com and other companies had such data from which they had been making the parts for years. Poli-Com points out that during the delays of these procurements, SPCC was procuring spare parts for the AN/SCR 20 from Poli-Com as well as the other companies. Poli-Com requests

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that the cancellations be rescinded and award to it be made on those where its offers were low. However, because of the passage of time, it contends that the proposed prices should be negotiated upwards in accordance with appropriate price indices to reflect inflation.

SPCC contends that the RFPs were canceled because of a management decision that updated and revised technical data were needed to permit competitive procurement and to reduce the number of claims for equitable adjustment based upon inadequate specifications. This decision, SPCC asserts, was prompted by pre-award survey reports of the Defense Contract Administration Service (DCAS) recommending against awards to Poli-Com or any other company without a complete and accurate data package.

At a conference held in this Office on December 21, 1976, the Navy denied the availability to SPCC of the technical data necessary to continue the canceled procurements. During the conference, no mention was made of the fact that a letter, dated December 16, 1976, from the Office of the Secretary of the Navy was enroute to a conference participant and stated that SPCC had located a complete microfilm set of the drawings at a Naval facility in Maryland. The Navy states that it plans to use an updated data package for a 100 percent small business set-aside and to solicit Poli-Com for such negotiated procurement.

It is clear that at the time of the cancellations adequate specifications did exist within the Navy. We have no indication that prior to the RFP cancellation SPCC made any effort to determine if a data package was available within the Navy. Based on that record we cannot say that the cancellations were justified.

SPCC now intends to buy these requirements with a procurement restricted to small business sources previously approved for such production. Poli-Com, on the other hand, argues that since the cancellations resulted from an erroneous determination that adequate specifications were lacking, the Navy should reinstate those RFPs where the offers of Poli-Com were low in order to permit price negotiations solely with Poli-Com. Poli-Com has stated that it would not accept award on any of the RFPs unless its prices could be negotiated upwards to reflect the inflation occurring since the submissions of its offers. Under 10 U.S.C. § 2304(g) however, such negotiations may not be permitted without conducting oral or written discussions with all offerors within the competitive range. The competitive range apparently was not established prior to the

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cancellations and we do not believe that establishing the competitive range now on the basis of obsolete offers would be in the best interest of the Government. Therefore, we have no objections to the procurements proceeding as now planned.

However we recommend that procedures be established within the Navy to require that reasonable attempts be made in the future to locate specifications at other Navy facilities before cancelling solicitations after the submission of proposals.

Acting

P. F. K. 1/4
Comptroller General
of the United States